A

Peter Anthony v Public Prosecutor

B

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO W-09–92–04 OF 2023
AHMAD ZAIDI IBRAHIM, MOHAMED ZAINI MAZLAN AND AZMI ARIFFIN JJCA
1 AUGUST 2025

C

Criminal Procedure — Appeal — Appeal against conviction and sentence — Whether trial court had carried out thorough judicial evaluation of the evidence to correctly find accused guilty as charged — Whether it was not open to appellate court to alter findings of fact made by trial court from the evidence and based on its assessment of credibility of the witnesses — Whether conviction of accused was safe — Whether sentence imposed on accused was not manifestly excessive nor inadequate but appropriate in the circumstances of the case

D

E

The instant appeal by the appellant, a former Minister for Infrastructure Development and State Assemblyman in Sabah, was against the High Court's dismissal of his appeal against conviction and sentence by the sessions court on a charge of committing forgery for the purpose of cheating under s 468 of the Penal Code. The appellant was sentenced to three years' jail and fined RM50,000 in default 15 months' jail for the offence. At the time of the offence, the appellant was the managing director of a company ('SAJSB') which was contracted to carry out Mechanical and Electrical ('M&E') works for Phase 2A at the Universiti Malaysia Sabah ('UMS') campus. He was found guilty of making a false statement in the title of a letter from the office of the deputy vice-chancellor of UMS ('SP8') for the purpose of cheating. The offence was said to have occurred at the office of the Chief Private Secretary ('Dato Azlin') to the then Malaysian Prime Minister ('PM'), Dato Sri Najib Razak. SP8 together with the UMS's then registrar, SP9, and another witness, SP3, had testified that they had discussed with the appellant a construction project to be undertaken on UMS's campus. SP8 and SP9 agreed to provide a letter of support from UMS so that SAJSB could successfully bid to undertake the project. The prosecution's evidence was that after SP3 had drafted the contents of the letter of support on the appellant's computer, the appellant had subsequently and on his own, inserted a title to the letter, printed the entire document out on SP8's office letterhead and had the same delivered to Dato Azlin. The PM had subsequently remarked on the letter that he approved of the project. Phase 2B of the M&E contract was eventually awarded to SAJSB but the award was later revoked when UMS and the PM's office learnt that Phase 2B had already been awarded to another company ('REMT'). The prosecution's case was that the appellant's false statement in the title of letter of

F

G

H

I

support was intended to deceive the intended parties into awarding Phase 2B of the M&E contract to SAJSB. At the hearing of the instant appeal, the appellant raised two preliminary issues which, he argued, rendered the entire trial a nullity, namely: (a) the fact that his charge sheet was not signed by the prosecuting authority; and (b) that a sanction to prosecute had not been obtained from the proper authority.

Held, unanimously dismissing the appeal and affirming the conviction and sentence:

(1) The charge sheet in the appellant's case was not required to be signed. Section 172 of the Criminal Procedure Code ('the CPC') applied only to proceedings in the High Court and could not, under any circumstances, be interpreted to extend to proceedings in the sessions court. In any event, the absence of a signature on the charge sheet was a minor irregularity under s 422 of the CPC which did not vitiate the proceedings. The absence of signature had not deprived the appellant of a fair trial or caused him to suffer a miscarriage of justice (see paras 11–13).

(2) Sanction to prosecute under s 129 of the CPC was not required for offences under the Malaysian Anti-Corruption Commission Act 2009 ('the MACC Act'). The charge against the appellant was for an offence under s 468 of the Penal Code which was a scheduled offence under the MACC Act. The case against the appellant required only the consent of the public prosecutor ('PP') as outlined in s 58 of the MACC Act. That consent was explicitly granted to the deputy public prosecutor ('DPP') when the charge was filed against the appellant and the DPP subsequently handled the case in the sessions court. The DPP was also authorised to amend the charge against the appellant without the need to obtain a fresh consent from the PP (see paras 14–15).

(3) The sessions court had found the appellant guilty as charged based on the circumstantial evidence. The court concurred with the findings made by the sessions court. The trial court had provided a thorough judicial evaluation of the evidence and there were no errors to justify intervention by the court. It was a well-established legal principle that an appellate court should not alter the factual findings of the lower court unless those findings were shown to be incorrect. This was especially important when the conclusions depended heavily on the credibility of the witnesses and the impressions formed by the trial court that had directly observed and assessed their demeanour and accuracy. In the premises, the conviction against the appellant was safe (see paras 35 & 51).

(4) There was no reason to disturb the sentence imposed by the trial court on the appellant. A sentence of the lower court should only be altered if it

was either manifestly excessive or insufficient. The sessions court had considered all relevant factors before imposing sentence and there was no reason to disturb it (see para 50).

[Bahasa Malaysia summary

Perayu merupakan seorang bekas Menteri Pembangunan Infrastruktur dan Ahli Dewan Undangan Negeri di Sabah, yang merayu terhadap keputusan Mahkamah Tinggi yang menolak rayuannya terhadap sabitan dan hukuman oleh mahkamah sesyen atas pertuduhan melakukan pemalsuan bagi maksud hendak menipu di bawah s 468 Kanun Keseksaan. Perayu telah dijatuhkan hukuman penjara selama tiga tahun dan denda sebanyak RM50,000, dan sekiranya gagal membayar denda, hukuman selama 15 bulan penjara. Pada masa kesalahan dilakukan, perayu merupakan pengarah urusan sebuah syarikat ('SAJSB') yang telah diberi kontrak untuk melaksanakan kerja-kerja Mekanikal dan Elektrikal ('M&E') bagi Fasa 2A di kampus Universiti Malaysia Sabah ('UMS'). Perayu didapati bersalah kerana membuat pernyataan palsu pada tajuk sepucuk surat daripada pejabat timbalan naib canselor UMS ('SP8') bagi tujuan menipu. Kesalahan itu dikatakan berlaku di pejabat Setiausaha Sulit Kanan ('Dato Azlin') kepada Perdana Menteri Malaysia ketika itu, Dato' Sri Najib Razak. SP8 bersama-sama dengan pendaftar UMS ketika itu ('SP9') dan seorang lagi saksi, SP3, telah memberi keterangan bahawa mereka telah berbincang dengan perayu mengenai projek pembinaan yang akan dijalankan di kampus UMS. SP8 dan SP9 telah bersetuju untuk menyediakan surat sokongan daripada UMS supaya SAJSB dapat membuat bidaan dengan jayanya untuk melaksanakan projek tersebut. Keterangan pihak pendakwaan adalah bahawa selepas SP3 menyediakan draf kandungan surat sokongan pada komputer perayu, perayu kemudiannya dengan sendiri telah menambah tajuk pada surat tersebut, mencetak keseluruhan dokumen menggunakan kepala surat rasmi pejabat SP8, dan menyerahkan surat itu kepada Dato Azlin. Perdana Menteri kemudiannya telah menurunkan catatan pada surat itu bahawa beliau meluluskan projek berkenaan. Fasa 2B kontrak M&E akhirnya diberikan kepada SAJSB tetapi pemberian kontrak itu kemudiannya dibatalkan apabila UMS dan pejabat Perdana Menteri mengetahui bahawa Fasa 2B telah pun diberikan kepada sebuah syarikat lain ('REMT'). Kes pihak pendakwaan adalah bahawa pernyataan palsu oleh perayu dalam tajuk surat sokongan tersebut bertujuan untuk memperdaya pihak-pihak berkepentingan agar memberikan Fasa 2B kontrak M&E kepada SAJSB. Semasa perbicaraan rayuan ini, perayu membangkitkan dua isu awal yang menurutnya menyebabkan keseluruhan perbicaraan menjadi tidak sah, iaitu: (a) kertas pertuduhan terhadapnya tidak ditandatangani oleh pihak pendakwaan; dan (b) izin mendakwa tidak diperoleh daripada pihak berkuasa yang sewajarnya.

Diputuskan, sebulat suara menolak rayuan dan mengekalkan sabitan dan hukuman:

A (1) Kertas pertuduhan dalam kes perayu tidak diperlukan untuk ditandatangani. Seksyen 172 Kanun Tatacara Jenayah ('KTJ') hanya terpakai bagi prosiding di Mahkamah Tinggi dan tidak boleh, dalam apa-apa keadaan sekalipun, ditafsirkan sebagai meliputi prosiding di mahkamah sesyen. Walau bagaimanapun, ketiadaan tandatangan pada
B kertas pertuduhan hanyalah suatu ketidakaturan kecil di bawah s 422 KTJ yang tidak menjejaskan keesahan prosiding. Ketiadaan tandatangan tersebut tidak telah menafikan hak perayu untuk mendapat perbicaraan yang adil atau menyebabkan perayu mengalami ketidakadilan (lihat
C perenggan 11–13).

(2) Izin mendakwa di bawah s 129 Kanun Tatacara Jenayah ('KTJ') tidak diperlukan bagi kesalahan di bawah Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 ('Akta SPRM'). Pertuduhan terhadap perayu adalah bagi suatu kesalahan di bawah s 468 Kanun Keseksaan yang
D merupakan kesalahan berjadual di bawah Akta SPRM. Kes terhadap perayu hanya memerlukan keizinan Pendakwa Raya ('PR') sebagaimana yang diperuntukkan dalam s 58 Akta SPRM. Keizinan tersebut telah diberikan secara jelas kepada timbalan pendakwa raya ('TPR') ketika pertuduhan difailkan terhadap perayu dan TPR tersebut kemudiannya
E mengendalikan kes tersebut di mahkamah sesyen. TPR juga diberi kuasa untuk meminda pertuduhan terhadap perayu tanpa perlu mendapatkan keizinan baharu daripada PR (lihat perenggan 14–15).

(3) Mahkamah sesyen telah mendapati perayu bersalah sebagaimana dalam
F pertuduhan berdasarkan keterangan mengikut keadaan. Mahkamah bersetuju dengan dapatan yang dibuat oleh mahkamah sesyen. Mahkamah perbicaraan telah memberikan penilaian kehakiman yang menyeluruh terhadap keterangan yang dikemukakan dan tiada sebarang kesilapan yang boleh mewajarkan campur tangan oleh mahkamah ini.
G Adalah menjadi prinsip undang-undang yang mantap bahawa mahkamah rayuan tidak seharusnya mengubah dapatan fakta oleh mahkamah bawahan kecuali dapatan tersebut terbukti salah. Prinsip ini adalah lebih penting apabila kesimpulan tersebut bergantung kuat
H kepada kebolehpercayaan saksi-saksi serta tanggapan yang telah dibentuk oleh mahkamah perbicaraan yang menilai secara langsung sikap dan ketepatan saksi-saksi tersebut. Oleh yang demikian, sabitan terhadap perayu adalah selamat (lihat perenggan 35 & 51).

(4) Tiada alasan untuk mengganggu hukuman yang telah dijatuhkan oleh
I mahkamah perbicaraan terhadap perayu. Sesuatu hukuman oleh mahkamah bawahan hanya boleh diubah sekiranya ianya secara nyata terlalu berat atau terlalu ringan. Mahkamah sesyen telah menimbangkan semua faktor yang relevan sebelum menjatuhkan hukuman dan oleh itu tiada sebab untuk ianya diganggu (lihat perenggan 50).]

Cases referred to

Datuk Haji Harun bin Haji Idris & Ors v PP [1978] 1 MLJ 240; [1977] 1 LNS 24, FC (refd)
PP v Wan Razali Kassim [1970] 2 MLJ 79; [1970] CLJU 121, FC (refd)
Tarmizi bin Yacob & Anor v PP and another appeal [2011] 4 MLJ 1; [2010] 8 CLJ 501, FC (refd)

Legislation referred to

Criminal Procedure Code ss 129, 172, 422
Evidence Act 1950 ss 8, 114(g)
Malaysian Anti-Corruption Commission Act 2009 s 58
Penal Code s 468

Appeal from: *Peter Anthony lwn Pendakwa Raya* [2023] MLJU 1782 (High Court, Kuala Lumpur)

Nicholas Kow (with Emile Ezra Hussain and Putri Alyra Narisha Abdul Hadi) (Kow, Lau & Ezra) for the appellant.
Wan Shaharudin bin Wan Ladin (with Haresh Prakash Somiah and Nurul Atiqah bt Mohamad Alias) (Deputy Public Prosecutor, Malaysia Anti-Corruption Commission) for the respondent.

Mohamed Zaini Mazlan JCA:

INTRODUCTION

[1] The appellant was found guilty for committing forgery for the purpose of cheating under s 468 of the Penal Code ('the PC') by the sessions court. The High Court subsequently dismissed his appeal, leading to his appeal to this court. His appeal was heard and dismissed on the 4 March 2025. We had delivered our broad grounds on the day of the decision. This judgment contains the full grounds for our decision.

THE CHARGE

[2] The appellant was charged at the sessions court on 12 March 2015 under s 468 of the PC. The amended main charge read as follows:

Amended Main Charge

> Bahawa kamu, di antara 13 Jun 2014 dan 21 Ogos 2014, di Pejabat Ketua Setiausaha Sulit kepada Y.A.B Perdana Menteri Malaysia, Tingkat 5, Bangunan Perdana Putra, Pusat Pentadbiran Kerajaan Persekutuan, Putrajaya, sebagai Pengarah Urusan Syarikat Asli Jati Sdn Bhd telah melakukan sesuatu pemalsuan kepada surat Pejabat Timbalan Naib Canselor UMS, Ruj: ULINK/UPSB/ADM/VOL.1/010(012) 9 Jun 2014 dengan memasukkan

pernyataan palsu pada tajuk surat tersebut dengan niat ianya digunakan untuk tujuan menipu dan dengan itu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 468 Kanun yang sama.

Hukuman:-

a) Penjara selama tempoh yang boleh sampai 7 tahun; dan

b) Dengan denda.

[3] Section 468 of the PC reads as follows:

468 Forgery for the purpose of cheating

Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

[4] Under the amended main charge, the appellant, who was the Managing Director of Sykt Asli Jati Sdn Bhd, was accused of inserting a false statement on the title of the letter from the office of the Deputy Vice Chancellor of Universiti Malaysia Sabah dated 9 June 2014. This act was alleged to have occurred at the office of the Chief Private Secretary to the Prime Minister between 13 June 2014 and 21 August 2014.

THE VERDICT

[5] The appellant was found guilty by the sessions court on 26 May 2022, and sentenced to three years of imprisonment, starting from that date. He was additionally fined RM50,000, and in default, 15 months imprisonment. The appellant paid the fine but nevertheless appealed to the High Court against the conviction and sentence. The High Court dismissed his appeal on 18 April 2023, and affirmed the sessions court's conviction and sentence. He has obtained a stay on the imprisonment pending the outcome of this appeal.

THE APPEAL

[6] We will first address the preliminary issues raised by the appellant in this appeal.

[7] The first preliminary issue raised by the appellant was that the charge sheet was unsigned and that there was no sanction. The appellant contended that this was a serious non-compliance in law and had occasioned a miscarriage of justice and/or a failure of justice to him. The appellant's learned counsel asserted that s 172 of the Criminal Procedure Code ('the CPC') mandates that charge sheets must be signed and that this requirement is mandatory. It was also highlighted that although s 172 specifically pertains to proceedings in the High

Court, it should likewise be applicable to the sessions court, where the appellant's case was initiated.

[8] The second preliminary issue was regarding sanction. The appellant argued that the respondent had only secured a sanction for the original charge, and had failed to obtain a new sanction when the main charge was amended and read again to the appellant in the sessions court. The appellant contended that a sanction is necessary for forgery, as outlined in s 129 of the CPC.

[9] The appellant urged this court to overturn the conviction and sentence, arguing that the entire trial was a nullity based on the preliminary issues.

[10] On the issue of the unsigned charge sheet, s 172 of the CPC reads as follows:

> 172 Charges to be in forms in Second Schedule
>
> (1) *All charges upon which persons are tried before the High Court* shall be brought in the name of the Public Prosecutor, and be as nearly as possible in accordance with the forms in the Second Schedule and shall be signed by the Public Prosecutor or by some person authorized by him in that behalf, and in the latter case the words 'By authority of the Public Prosecutor' shall be prefixed to the signature.
>
> (2) The proceedings shall not abate or determine by reason of the death or removal from office of the Public Prosecutor. (Emphasis added.)

[11] We are of the view that there is no requirement for the charge sheet to be signed. Section 172 of the CPC clearly applies only to proceedings in the High Court and cannot, under any circumstances, be interpreted to extend to proceedings in the sessions court. Section 172 is clear and must be read literally. As the appellant's case was commenced in the sessions court, there was no requirement for the charge sheet to be signed.

[12] In any event, the absence of a signature on the charge sheet constitutes a minor irregularity, as outlined in s 422 of the CPC:

> 422 Irregularities not to vitiate proceedings
>
> Subject to the provisions contained in this Chapter *no finding, sentence or order passed or made by a Court of competent jurisdiction shall be reversed or altered on account of* —
>
> (a) *any error, omission or irregularity* in the complaint, sanction, consent, summons, warrant, *charge*, judgment or other proceedings before or during trial, or in any inquiry or other proceedings under this Code;
>
> (b) the want of any sanction; or
>
> (c) the improper admission or rejection of any evidence,

A *unless such error, omission, irregularity, want, or improper admission or rejection of evidence has occasioned a failure of justice.* (Emphasis added.)

B **[13]** Section 422 of the CPC clearly states no sentence passed by a court of competent jurisdiction shall be reversed solely due to any irregularities in the charge unless it has resulted in a failure of justice. We are unable to appreciate how the absence of a signature on the charge sheet has deprived the appellant of the right to a fair trial and led to a failure of justice. Furthermore, the charge against the appellant, before and after being amended have been read and explained to the appellant. The appellant's contention that he had suffered a C miscarriage of justice is quite simply untenable.

D **[14]** On the issue of sanction, we agree with the respondent that sanction under s 129 of the CPC is not required for offences under the Malaysian Anti-Corruption Commission Act 2009 ('MACC Act 2009'). The charge against the appellant is for an offence under s 468 of the PC, a Scheduled offence under the MACC Act 2009.

E **[15]** The case against the appellant requires only the consent of the public prosecutor, as outlined in s 58 of the MACC Act 2009. This consent was explicitly granted to the deputy public prosecutor ('DPP') when the charge was filed against the appellant, and the DPP subsequently handled the case in the sessions court. Additionally, the DPP was authorised to amend the charge without needing to obtain new consent, which is what occurred in this F instance. A similar objection was raised in the case of *Tarmizi bin Yacob & Anor v Public Prosecutor and another appeal* [2011] 4 MLJ 1; [2010] 8 CLJ 501 where the Federal Court held:

G The settled Malaysian proposition has been to consider a deputy public prosecutor as being capable of exercising all the rights and powers of the public prosecutor ... It follows from this proposition that where prosecution is conducted by a DPP, the consent of the public prosecutor is implicit in his actions and no further written consent of the public prosecutor is required.

H **[16]** We are therefore resolute in concluding that the preliminary issues raised by the appellant were unmeritorious.

[17] We will now address the substantive issues.

I **[18]** The appellant was previously Sabah's Minister for Infrastructure Development and a State Assemblyman. He also served as the Managing Director of Sykt Asli Jati Engineering Sdn Bhd ('the company'). At that time, the company was contracted to perform operational and maintenance work for the Mechanical and Electrical ('M&E') Phase 2A at the Universiti Malaysia

Sabah ('UMS') campus. This contract was named 'Kontrak Kerja-Kerja Operasi dan Penyelenggaraan bagi Sistem Mekanikal dan Elektrikal Fasa 2A UMS'.

[19] There were three material witnesses for this case, namely:

(a) Mohd Shukor bin Mohd Din ('SP3'),

(b) Professor S Abd Kadir ('SP8'), who was the Deputy Vice Chancellor of UMS, and

(c) Dato' Abdullah bin Mohd Said ('SP9'), who was UMS's Registrar.

[20] SP3, SP8, SP9, and the appellant have discussed a joint venture project between the company and ULink Property Sdn Bhd ('ULink'), which is a subsidiary of UMS. This project was for the construction of a building at the Urban Transformation Center at UMS for student activities. This initiative is referred to as the 'Smart Partnership project'. SP9 served as the Chairman of ULink. SP8 and SP9 agreed to provide the letter of support from UMS to the company for the Smart Partnership project. SP8 gave SP3 a blank letterhead from his office.

[21] SP3 then drafted a letter of support using the computer in the appellant's office. Before leaving for home, he left the blank letterhead in the office. SP3 stated that he only typed the contents of the letter on the appellant's office computer without the title or heading. The respondent alleged that the appellant had inserted the title to the letter drafted by SP3.

[22] The crux of the respondent's case against the appellant was the letter of support from the Deputy Vice Chancellor of UMS (SP8) dated 9 June 2014. This letter has been designated as exh 'P2' ('the P2 letter'). The primary issue at hand is whether the appellant was the one who inserted the title of the letter, which was as follows:

> KERJA-KERJA OPERASI DAN PENYELENGGARAN BAGI SISTEM MEKANIKAL DAN ELEKTRIKAL BAGI SISTEM MEKANIKAL DAN ELEKTRIKAL DI BANGUNAN FASA 2B, BANGUNAN DAN INFRA DI KAMPUS INDUK (FPL/PUSAT RAWATAN LUAR WARGA SIKUATI, KUDAT) DAN BANGUNAN LAIN UNVERSITI MALAYSIA SABAH — SELAMA LIMA (5) TAHUN
>
> ('the title')

[23] The P2 letter essentially states that UMS has no objections and fully supports the joint venture between ULink and the company to fulfil the contract mentioned in the letter's title, which pertains to Phase 2B of the M&E contract. It is important to note that Phase 2B of the M&E contract has already

A been awarded to REMT Utama Sdn Bhd ('REMT'). The company had already been awarded Phase 2A.

[24] The appellant provided the P2 letter to SP3 and directed him to obtain SP8's signature on it. SP3 met with SP8 and secured his signature on the P2 B letter. While two other letters, which were marked as exhs P5 and P6, were also signed, the primary focus of the case against the appellant was the P2 letter.

[25] On 13 June 2014, the appellant and SP3 visited the office of the late Dato' Azlin Alias, who was the Principal Private Secretary to the Prime C Minister at the time, namely Dato' Sri Mohd Najib bin Tun Abdul Razak. The appellant brought the P2 letter and met with Dato' Azlin privately, while SP3 waited outside. In his defence, the appellant denied being present at that meeting. The Prime Minister had appended his minutes on the P2 letter expressing his approval. D

[26] Phase 2B of the M&E contract was eventually awarded to the company. However, this award was later revoked when UMS and the Prime Minister's office uncovered misconduct related to the P2 letter. As a result, the appellant E was charged in court, while SP8 and SP9 faced disciplinary action from UMS.

[27] The prosecution contended that the appellant had added the title to the P2 letter to deceive, as the contract would serve to benefit the company in which the appellant held an interest. This was the core of the s 468 of the PC F charge against the appellant.

[28] The appellant raised several issues in this appeal. The appellant alleged that SP3 could be the author of the P2 letter, as SP3 was the individual who received the blank letterhead from SP8's office. It was emphasised that SP3 G admitted to typing the contents of the P2 letter at the appellant's office and that he was the one who handed over the P2 letter to SP8 for the latter's signature. The appellant also argued that SP8 was the creator of the P2 letter since he signed it after its completion. The appellant contended that the title of the P2 letter made no reference to the company, arguing that it could not be H interpreted as benefiting either the company nor the appellant. He stated that he would have included the company's name in the title if he had intended to benefit the company. Additionally, the appellant maintained that he was never at the late Dato' Azlin's office on 13 June 2014 to hand over the P2 letter. The appellant submitted that the sessions court erred in placing undue reliance on I SP3's testimony, as he was an unreliable witness.

[29] The appellant augmented his attack on SP3's credibility by referring to the police report that SP3 had lodged, referred to as Police Report No: KOTA KINABALU/003819/18/18 dated 9 August 2018 ('the police report'). This

court had on 7 February 2024 allowed the appellant's application to admit SP3's police report as further evidence. The appellant highlighted that SP3 did not disclose that he had made the police report during the course of trial and that he had only discovered SP3's police report through a friend. The contents of SP3's police report are reproduced below:

> MOHD SHUKOR BIN MOHD DIN, 640711–12–5391 TAMAN TELUK VILLA HSE NO 546 PUTATAN.
>
> SAYA YANG BERNAMA DI ATAS INGIN MEMBUAT LAPORAN POLIS BERKAITAN DENGAN KEJADIAN YANG BERLAKU PADA 20.7.2017. PADA MALAM SELEPAS KEJADIAN, SAYA TELAH MEMBUAT KENYATAAN BERTULIS TERHADAP APA YANG BERLAKU DAN INGIN MEMBUAT LAPORAN POLIS NAMUN SAYA BERASA TAKUT AKAN IMPLIKASI YANG MUNGKIN AKAN BERLAKU KE ATAS SAYA. BERSAMA INI SAYA KEPILKAN KENYATAAN BERTULIS YANG TELAH SAYA BUAT PADA 20.7.2017. SEJAK KEJADIAN ITU SAYA JUGA TIDAK BERKESEMPATAN UNTUK HADIR MEMBUAT LAPORAN POLIS. PADA HARI INI SAYA INGIN MEMBUAT LAPORAN POLIS BAHAWA SAYA BERPENDAPAT PADA KEJADIAN MALAM 20.7.2017 KENYATAAN/AFIDAVIT YANG SAYA BUAT DI PEJABAT SPRM KOTA KINABALU ADALAH TIDAK BETUL KERANA SAYA TELAH MENERIMA TEKANAN DAN KENYATAAN SAYA ITU TELAH DITOKOK TAMBAH OLEH PEGAWAI PENYIASAT TERUTAMANYA PADA PARAGRAPH TERAKHIR YANG DITULIS DAN DITAMBAH SENDIRI OLEH PEGAWAI BERKENAAN AGAR SASPEK BOLEH DISABITKAN BERSALAH KE ATAS PERTUDUHAN KES BERKENAAN. KENYATAAN YANG PALING SAYA TIDAK BERSETUJU ADALAH YANG TELAH DITOKOK TAMBAH OLEH PEGAWAI PENYIASAT ADALAH YANG TERTULIS DI DALAM PARAGRAPH TERAKHIR IAITU 'SASPEK BERNIAT UNTUK MENIPU DENGAN MENGGUNAKAN UMS UNTUK MENGELIRUKAN SERTA MENIPU PERDANA MENTERI DATUK SERI NAJIB BIN TUN ABDUL RAZAK BAGI MEMBERIKAN PROJEK KEPADA SYARIKAT SASPEK. SAYA MERASAKAN KENYATAAN INI ADALAH BERNIAT JAHAT DAN BERUNSUR POLITIK. SASPEK YANG DIMAKSUDKAN ADALAH 'SYARIKAT ASLI JATI SDN BHD' YANG DIMILIKI OLEH DATUK PETER ANTHONY. SAYA BUAT LAPORAN UNTUK RUJUKAN PIHAK MAHKAMAH BAHAWA SAYA TIDAK BERSETUJU DENGAN PERNYATAAN SAYA PADA MALAM TERSEBUT. SEKIAN LAPORAN SAYA.

[30] In essence, SP3 in the police report claimed that the written statement that he made at the Malaysian Anti-Corruption Office's at Kota Kinabalu on the night of 20 July 2017 was not true, as he was under pressure and that the last paragraph of his statement was concocted by the Investigating Officer to implicate the appellant, by stating that the appellant had intended to deceive the Prime Minister, Dato' Sri Najib bin Tun Abdul Razak, by using UMS in order for the contract to be awarded to the appellant's company.

[31] The appellant contended that SP3's police report had clearly exonerated the appellant and that SP3's failure to disclose the police report during the course of trial had prejudiced the appellant as he was deprived of the right to a fair trial in not being able to cross-examine SP3 on the police report. The appellant argued that the contents of the police report undermines SP3's credibility.

[32] SP3 had during the trial testified that he had left the blank letterhead of the Deputy Registrar of UMS at the appellant's office and had prepared the P2 letter without a title. SP3 then claimed that he had saved the contents of the letter in the appellant's computer at the appellant's office and that he had received the prepared letter from the appellant later. The appellant contended that SP3's police report contradicted his testimony in court and that if the sessions court had the benefit of analysing the report, the outcome of the case would have been different.

[33] The appellant also argued that the sessions court did not fully consider the testimony of the appellant's personal assistant, SB2. SB2 testified that the appellant's office computer was protected by a password known only to her, which contradicts SP3's claim that he had typed the P2 letter using the appellant's office computer. Additionally, the appellant pointed out that no forensic analysis was conducted on the office computer after it was seized. The appellant submitted that an adverse inference under s 114(g) of the Evidence Act 1950 should be invoked, as a forensic analysis could confirm or refute SP3's claims. These are the key issues raised by the appellant in this appeal.

[34] As for the sentence, the appellant cited several cases that were similar to his own, noting that the sentence passed in those cases were less severe than the one he received. The appellant sought for a reduction in his sentence, should the court reject his appeal against the conviction.

OUR FINDINGS

[35] The sessions court determined that there was no direct evidence proving that the appellant had forged the letter. However, the sessions court concluded that circumstantial evidence indicated that only the appellant could have forged the P2 letter. We concur with the findings of the sessions court. SP3 had only typed the contents of the P2 letter on the computer in the appellant's office, and left the blank letterhead in the office. The facts reveal that the appellant forwarded the P2 letter to SP3 the following day. If SP3 had typed the P2 letter with the title, he would have left the appellant's office with it, and there would have been no reason to leave the blank letterhead from SP8's office in the appellant's office. It makes no sense for SP3 to prepare the letter in full and then leave it in the appellant's office.

[36] We also agree with the sessions court's conclusion that the P2 letter favoured the appellant, as it served as a letter of support from UMS to the company for Phase 2B of the M&E contract. SP3, SP8, and SP9 consistently stated that their interest was solely in the Smart Partnership project between the company and ULink. They believed that the P2 letter was a letter of support for that project. The sessions court also found it credible that the appellant might have taken the necessary steps to secure the M&E contract for himself. We concur with the sessions court's finding that only the appellant could have added the title to the P2 letter as it benefitted him vis a vis the company. SP3, SP8, and SP9 had no financial stake in the M&E contract, as only the accused and his company stand to gain from it.

[37] The sessions court, in evaluating the evidence, accepted the testimonies of SP3, SP8, and SP9. The court concluded that only the appellant had the opportunity to forge the heading of the P2 letter and that he did so dishonestly without UMS's approval, for his own benefit. This action would lead to the company being awarded the Phase 2B of the M&E contract, to the detriment of UMS and REMT.

[38] The sessions court also held that SP3, SP8, and SP9 were deceived by the appellant into believing that the P2 letter was issued for the Smart Partnership project. Their testimonies were deemed credible, especially since they did not stand to gain from the M&E contract being awarded to the company. Furthermore, the court noted that their testimonies withstood rigorous cross-examination by the appellant's counsel.

[39] We are not inclined to disturb these findings, as the sessions court, being the trial court, was in the best position to analyse the demeanour of these witnesses and assess their testimonies against the evidence presented. In our capacity as an appeal court, deference should be given to the sessions court's findings on the witnesses, as the Federal Court in *Public Prosecutor v Wan Razali Kassim* [1970] 2 MLJ 79; [1970] CLJU 121 (FC) held that '... an appellate court does not have the advantage of seeing and hearing the witnesses and therefore of assessing their credibility'.

[40] The sessions court had also considered the appellant's argument that SP8 was the author of the P2 letter. We concur with the sessions court's conclusion that the elements of the charge were only fulfilled when the appellant handed the P2 letter to the late Dato' Azlin. This action resulted in the company being awarded the Phase 2B of the M&E contract through direct negotiations, albeit revoked later when the Prime Minister discovered the appellant's misdeeds. But for the P2 letter, the company would not have been awarded the Phase 2B of the M&E contract.

[41] We also concur with the sessions court's finding that the appellant was aware that the M&E contract went through an open tender process, as the company participated as one of the bidders. SP1 testified that the appellant reprimanded him when their company was not awarded Phase 2B of the M&E contract. The sessions court appropriately considered the appellant's subsequent behaviour as a relevant fact under s 8 of the Evidence Act 1950.

[42] We agree with the sessions court's determination that the appellant had forged the P2 letter with the intention of cheating. He deceived SP3, SP8, and SP9 into believing that the P2 letter was related to the Smart Partnership project. Additionally, the court also found that the appellant had used the P2 letter to mislead the Prime Minister into thinking that he had UMS's support for securing the M&E contract through direct negotiations for five years, despite the fact that the contract had already been awarded to REMT through an open tender process. We also agree with the court's finding that it was sufficient to demonstrate that the appellant forged the P2 letter with the purpose of cheating, and it was unnecessary to prove that he succeeded in cheating. The Federal Court in *Datuk Haji Harun bin Haji Idris & Ors v Public Prosecutor* [1978] 1 MLJ 240; [1977] 1 LNS 24 held as follows:

> With regard to the third main point, namely that PW12 was intended to be used for the purpose of cheating, the learned trial judge considered and we agree that the prosecution need not prove the actual commission of the offence of cheating but only that the three accused intended P12 to be used for the purpose of cheating.

[43] The sessions court had carefully analysed the appellant's defence, specifically the testimonies of SB2 and SB3. SB2 claimed that SP3 had never visited the appellant's office or met her, and that the office computer could only be accessed with a password. However, the court correctly dismissed these defences as mere denials and afterthoughts, noting that these issues were not raised during the investigation or presented to the prosecution's witnesses, particularly SP3 and the Investigating Officers. The sessions court did not err in concluding that the appellant's failure to present his defence at the earliest opportunity indicated that it was an afterthought. In fact, this further reinforced the credibility of the prosecution's witnesses.

[44] As for SB3's testimony, even though SB3 was a qualified Digital Forensic expert, the sessions court was of the view that SB3's opinion that a forensic analysis done on the appellant's computer could reveal whether the title to the P2 letter was added later or otherwise was merely theoretical and conjecture in nature. This was due to the fact that SB3 under cross-examination agreed that a forensic analysis would not be able to show what amendments were done to P2, and more importantly who did the amendments. We are of the view that the sessions court had considered SB3's

testimony satisfactorily before concluding that it did not raise any doubt towards the prosecution's case.

[45] The appellant's claim that he did not visit the late Dato' Azlin's office on 13 June 2014 is, in our view, simply a denial. The sessions court found this to be unconvincing, as the testimonies of SP3 and SP8 indicated that the appellant did visit the office. This was further supported by the presence of the late Dato' Azlin's office stamp on the P2 letter, which was dated 13 June 2014. The court also favoured SP8's testimony that he had accompanied the appellant, who entered the office to meet with the late Dato' Azlin alone with the P2 letter. The court recognised that the appellant personally knew the late Dato' Azlin and had access to the Prime Minister. The appellant had in fact acknowledged that SP3, SP8, and SP9 sought to leverage his close relationship with the late Dato' Azlin to gain support for the Smart Partnership project. In light of these factors, we are of the opinion that the sessions court's conclusions were well-founded.

[46] The sessions court considered the appellant's argument that the person who authored the P2 letter was SP8, and that the appellant could only be considered its creator if he added the title after SP8 had signed it. The appellant also questioned the truthfulness of SP8's testimony, which stated he signed the P2 letter without reading it, as he had relied on SP3 for guidance. We agree with the sessions court's findings that the elements of the s 468 of the Penal Code charge, that the appellant forged the P2 letter by inserting the title, were proven. The sessions court correctly concluded that SP8 had signed the P2 letter without reviewing its content because he relied on SP3 credibility as not inherently implausible. Furthermore, the court believed that there was no motive for SP8 to act dishonestly, considering his age and position at UMS, and it seemed unlikely he would risk his status. We see no reason to disturb these findings as they were well-founded.

[47] We now come to SP3's police report made on 9 August 2018. In gist, SP3 had in the police report claimed that the statement that he made at the Malaysian Anti-Corruption office's at Kota Kinabalu on 20 July 2017 was done under duress. SP3 in the police report also claimed that the last paragraph of his statement where he implicated the appellant of the offence in this charge was concocted by the Investigating Officer. The issue is whether the appellant was prejudiced in not being able to cross-examine SP3 on the police report as he would have had the opportunity to challenged SP3's credibility. Furthermore, the contents of the police report would seem to exonerate the appellant.

[48] The appellant was produced and charged at the sessions court on 28 July 2020. The trial commenced nearly a year later on 5 April 2021. SP3 was cross-examined on the 27 July 2021 and 27 August 2021. We have perused the

sessions court's notes of proceedings and noted that SP3 had been cross-examined extensively. We also noted that SP3's police report dated 9 August 2018 was lodged nearly a year after he had given his statement to the Malaysian Anti-Corruption Commission on the 20 July 2017, which begs the question why he had only decided to lodge the report a year later. Nevertheless, SP3 was subjected to intense cross-examination three years after he had lodged the police report. He could have maintained what he had stated in the police report during the trial. It was apparent that he did not. Now whether he had told the truth in implicating the appellant would have been tested through cross-examination, even without the police report. It was after all the appellant's defence that SP3 could have been the one who prepared the SP2 letter in its entirety.

[49] We are unable to agree with the appellant's contention that he was prejudiced in not being able to cross SP3 without the police report. Furthermore, the sessions court's findings were not based on SP3's testimony alone. Based on our analysis, it was evident that the sessions court had considered the testimonies of the other witnesses, such as SP1, SP8, SP9 and SP12 (the Prime Minister). The sessions court's conclusion on the appellant's guilt was based on the circumstantial evidence presented by the respondent during trial, and not just on SP3's testimony alone. It was established for example that it was the appellant that had presented the P2 letter to the late Dato' Azlin. It was also established that the appellant's company would have benefitted by getting the project based on the P2 letter. We are of the opinion that the other circumstantial evidence are sufficient to convict the appellant even if SP3's credibility had been damaged.

SENTENCE

[50] Regarding the sentence imposed on the appellant, the respondent has requested this court to increase both the imprisonment term and the fine, while the appellant seeks a reduced sentence. In an appeal concerning a sentence, the role of this court is limited to a review. A sentence from the lower courts should only be altered if it is found to be manifestly excessive or insufficient. We are of the view that the sessions court had appropriately considered all relevant factors before arriving at its decision and see no reason to disturb it.

CONCLUSION

[51] It is a well-established legal principle that the appellate court in an appeal should not alter the factual findings of the lower court unless those findings are shown to be incorrect. This is especially important when the conclusions depended heavily on the credibility of the witnesses and the impressions formed by the court that directly observed and assessed their demeanour and accuracy. We are convinced that the sessions court provided a

thorough judicial evaluation of the evidence, and we find no errors that would justify intervention by this court. We therefore find the conviction against the accused is safe. We dismiss the appellant's appeal and uphold the conviction and sentence imposed by the sessions court.

Appeal dismissed; conviction and sentence affirmed.

Reported by Ashok Kumar